

**TOWN OF JAFFREY**  
**Jaffrey, New Hampshire**  
**BOARD OF ADJUSTMENT**  
**Meeting Minutes**  
**June 3, 2014**

**Present:** Chairman Sawyer, Members Belletete, Cournoyer, Tieger and Webber

**Absent:** Member Dodge

**Staff:** Recording Secretary Lemire

**MEETING MINUTES APPROVAL**

On a motion by Webber, seconded by Belletete the minutes for the March 4, 2014 meeting were approved as submitted. (5-0)

**PUBLIC HEARING**

Chairman Sawyer called the public hearing to order at 7:30 p.m. The rules of procedure were read aloud. Notice of hearing for case No. ZBA 14-03 and ZBA 14-05 as advertised in the *Monadnock Ledger-Transcript*; copies were posted in the Town Office building, the Library and the town web site; copies were sent to the Planning Board, the Conservation Commission, and the Board of Selectmen; and notice of hearing was sent by certified mail to all abutters whose names were provided by the applicants. Chairman Sawyer asked Attorney Hanna if there was any objection to them taking the cases out of order placing them second on the agenda. There was no objection. Member Cournoyer would vote.

**Public Hearing - New Items**

1. ZBA 14-05 O'Brien, Joseph and Amy, 30 Oak St., Map 244 / Lot 38, Zone: Residence B (with town water)

Variance – The applicant proposes an above ground pool and privacy fence with less than the required setbacks of thirty feet. (Zoning Ordinance, Section V, 5.1)

Presentation: Joseph O'Brien

Appearance:

The property consists of .23 acres and is very typical in size for the neighborhood which pre-dates zoning. Mr. O'Brien is proposing a twenty-four foot, above ground swimming pool and privacy fence. The pool will be approximately twelve feet from both the side and rear property lines and the fence will be six feet from the side property line. The only conforming spot for the pool on the property would be where the garage is. The chosen location will place the pool off the corner of the existing garage allowing use of the garage wall to house the necessary electrical box. A sketch showing the layout of the property and the proposed pool was displayed for the board. Letters from abutters Saggerer, Beckett, McDermott, Hartwell and Libbertan speaking in favor of the proposal were submitted into the record.

Member Belletete asked about the setbacks. Mr. O'Brien explained that the fence, although it doesn't need a setback, will be constructed six feet in from the property line. The pool itself will be approximately twelve feet from both the side and rear property line.

On a motion by Tieger, seconded by Webber the board waived the site visit. 5-0

**There being no further discussion, Chairman Sawyer closed the public hearing for this item.**

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**Public Hearing – Continued Items**

2. ZBA 14-03 Algav, LLC (property of 295 Squantum Rd., LLC) 295 Squantum Rd., Map 242 / Lot 45, Zone: Residence A

Variance – The applicant proposes a variance for a change of use to an existing commercial building for use as warehouse storage within the Residence A district. (Zoning Ordinance, Section III, 3.2, Section XI, 11.1.3)

Presentation: Attorney Tom Hanna

Appearance: Ezra Ketola

Attorney Hanna explained that he represents the owner of the building and Mr. Paul Trudeau is the principal of the company that moved mid-country. A memo from Attorney Hanna outlining the proposal and the variance criteria was submitted to the board. The board asked to take a few minutes to read the document.

Attorney Hanna began by saying that he does not believe that a variance regarding the issue of timing is needed. The property has been there for more than fifty years and according to the owners they ceased the manufacturing operations in mid 2012. After 2012 the equipment remained well into 2013. In April of 2013 the two large generators were removed leaving behind for another couple of months other large equipment that was fixed and difficult to remove. The equipment was out of the building by May of 2013 and the cleaning process began almost immediately with ongoing sale and disposal of smaller equipment. In October of 2013 the bathrooms were winterized and roof repair continued. Into 2013 the building was being readied for sale and was entirely empty by May of 2013. Throughout the history of the manufacturing use there was a substantial part of the building that was used for storage of supplies and warehousing the end product which was shipped out on a daily basis.

Attorney Hanna contends that the use continued long enough and that the use is an industrial use and that it was a warehouse and storage facility in addition to the manufacturing such that if the board finds that it is a use that was not abandoned and that the use was the storage/warehousing type of facility that is proposed then no variance would be required. Attorney Hanna's interpretation of the law on abandonment is that if an operation is maintained in a state of readiness for ongoing industrial uses, including the ongoing warehousing and storage use then it's not abandonment. This application was made in April of 2014 and that would be less than a year after the final removal of equipment in May of 2013 keeping in mind that there was still a person there to clean things up and work there on a regular basis keeping it in the state of readiness for sale. Should the board determine that there was abandonment then Attorney Hanna feels his client is entitled to the variance under Section 3.2. If the board determines it was not abandoned but that the use is substantially different from the use that was grandfathered (manufacturing) and that the proposed is enough different to warrant a change of use then a variance would be required for a change of use from the prior manufacturing use.

Chairman Sawyer asked if there was ever a variance granted for the property to be used for manufacturing after the zoning regulations were established. Attorney Hanna was not aware of one and his understanding is that it's a use that predated the ordinance. Chairman Sawyer agreed.

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Attorney Hanna reviewed the variance criteria beginning with 5B (hardship) as he feels this is the nub of the variance argument. His position is that there is a rambling 22,500 square foot building with concrete floors throughout the building; it is crack free and in good shape. The property and building has been developed for industrial purposes and that is the special condition of the property and under NH law it can be the improvements. It has been there for fifty years and it cannot be undone without a phenomenal expense. The building was designed and constructed for industrial uses and cannot be reasonably or feasibly used for any use that is permitted in the Residence A District. The property cannot, therefore, be used in strict conformance with the ordinance.

Attorney Hanna continued with the criteria review. In summary, he feels there is no negative impact as a result of this proposal and nothing that is contrary to the public interest. It will not be contrary to the public interest to leave it there with the new proposed use; there will be less impact than the previous use. Speaking to the spirit of the ordinance Attorney Hanna stated that if it's non-conforming it's non-conforming by a hair in terms of timing; the building is there. The spirit of the ordinance essentially recognizes existing properties, allows those properties to continue and the spirit still applies. In his view it would be a regulatory taking given the size and history of the building to say that it now has to revert to a use that would essentially mean demolition; that would be extraordinarily costly and disruptive. Substantial Justice means that the loss to the owner is not out-weighed by the benefit to the public. Granting the variance will not harm the abutters, the community or the public and the public will gain nothing by the denial of the variance. Denial would cause a great loss to the owner/applicant because the existing building on the property is an industrial building with a large footprint. Granting the variance will do substantial justice because a loss to the owner/applicant that is not outweighed by a gain to the public is an injustice. Regarding the value of surrounding properties Attorney Hanna stated that he spoke with the closest abutter to the east and she is looking forward to the new owner; it will be a lot quieter than the manufacturer. He does not feel that the proposed use will have an adverse effect on surrounding property values given that the property has been the site of a manufacturing operation for more than 50 years. The proposed use will likely have less of an impact than the historical use. It will generate less traffic and less noise than in the past. Granting the variance will not result in any significant change to the property from the abutters' or public's perspective nor will it result in any negative effect upon the surrounding properties.

During his review Attorney Hanna explained that the loading dock to the west was used for incoming supplies and materials. The small loading dock to the east was used for picking up daily shipments. The small dock to the east will no longer be used. The dock to the west however will be used and in fact the loading platform itself may be removed to allow for better coverage of the large vehicles. There is a fair amount of buffering in the middle of the property on the west front side ranging from very large oaks and pines to a mix of smaller trees.

Addressing the hours of operation Attorney Hanna stated that there will be occasional times when employees have to arrive at 5:00 a.m. and no earlier than five, and this would happen when they have to be on a job site by seven and it is two hours away. This would be a rarity. As he understands it, for the most part the commercial job involves the trucks staying on the job site. On the residential side, if there are consecutive jobs the trucks may move from site to site without returning to the warehouse. Unlike the previous business trucks will not be coming in and out on a daily basis; this operation will be gone all day long and the trucks may be gone for several days in a row. Trucks associated with the business are two boom trucks, one form truck and Chevy 2500 diesel crew cabs for the crew. There will be a crew that leaves their personal vehicles, typically pick-up trucks, at the warehouse. Given all of the information stated Attorney Hanna feels that the proposed use will be substantially better for the neighborhood and the alternatives don't really exist. Photos of the site were distributed and explained to the board.

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Member Belletete understands that trucks would not leave earlier than 5:00 a.m.; how late would the large trucks return? Mr. Ketola estimates no later than 6:00 p.m. on a regular basis; perhaps 7:00 on a rare occasion.

Member Tieger asked if the boom trucks are diesel and if so do they need to idle for a period of time? Mr. Ketola explained that they idle five to ten minutes while the air pressure for the brakes builds up. Attorney Hanna mentioned the issue brought up at the previous meeting of tractor trailer trucks not being able to make the turn from the facility onto Squantum Road without going onto abutting property. Mr. Ketola explained that unlike a tractor trailer his large trucks are one piece making his turning ability easier. He explained that when a tractor trailer makes a left hand turn it has to drive straight out and jack knife in order to avoid oncoming traffic and make a turn; his trucks can simply make a normal turn without having to jack knife. Member Tieger asked how long the boom trucks are compared to a tractor trailer. Mr. Ketola replied that a boom truck is forty-five to fifty feet long where a trailer is fifty-five feet and approximately seventy to eighty feet long with the cab.

Mr. Gary Niskala is representing his mother who is an abutter and they are not in favor of granting the request. The front of her house is directly across from the west entrance of the property in question; he estimates her house to be approximately forty-five feet from the entrance. His first question was isn't the road posted for no commercial vehicles? Member Cournoyer replied commercial trucks to and from this property are supposed to use Prescott Road. They are not supposed to travel through any of the roads to the right such as Hunt Rd. Large trucks are allowed to make deliveries on these roads but they cannot travel through them. Mr. Niskala stated "It has been many years since there have been tractor trailers in here and that's not true about them coming in several times a week because that hasn't happened." In the last few years any shipments leaving the facility were done via UPS a couple of times a week and they were done through the small loading dock at the front of the building. As for the buffer Mr. Niskala considers it to be brush and asked what happens in the winter when the leaves are gone? Mr. Niskala's mother is elderly; he is not in favor of her having to deal with truck lights shining into her house at 5:00 a.m. in addition to any noise and diesel smell from idling trucks. He believes that manufacturing has not happened at the facility for at least a couple of years.

Mr. Mark Stone is an abutter directly behind the facility and after thinking about what was said at the prior meeting he too is totally against the proposal. His amended concerns were outlined in an e-mail sent and distributed to the board prior to the meeting. In summary he does not believe the property should be used for anything other than residential. He disagrees with the time line on when the manufacturing process ceased and feels it was outside of the one year time frame as stated in the ordinance; he has concerns about noise at 5:00 a.m. and disagrees that this type of building would not have a life as something other than industrial and would have to be demolished – what about apartments? If a zoning ordinance was in place back in 1957 as it is today this would not be allowed.

Member Tieger mentioned that last month they had announced a date and time for a site visit. On the day of the site visit a request came from the applicant asking to postpone the site visit and public hearing to the June 3 public hearing. Because the visit had been announced the board still made their visit to the property and toured it from the outside. No abutters nor the applicant or any representatives for the property were present. Are they obligated to make another site visit with more people there? Chairman Sawyer stated that they could visit again however it was announced at the public hearing. Everyone was aware and had the opportunity to be there. It was discussed and the board agreed that another visit was not necessary.

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Member Cournoyer asked if there were a couple more years on the contaminated area behind the facility. Attorney Hanna understands it will be declassified in 2016. Member Cournoyer asked if there are any oil spills within the facility. Mr. Ketola replied that everything has been cleaned and swept up but there is no evidence of any spills. Typically you would have cut marks in the concrete and there are none; he assumes it was done intentionally as a preventative measure against spills and seepage. Member Tieger asked if a Level 1 assessment had ever been done. Attorney Hanna answered that one had been done for Mr. Trudeau at the end of 2011.

Mr. Niskala asked before a decision is made who is going to legally determine when manufacturing ceased and did it go back to residential? Did it remain commercial? Attorney Hanna has his opinion; he is also working for his client. Chairman Sawyer replied that it will be up to the board; if it's a point that needs to be decided.

At the request from Member Tieger at 9:10 p.m. Chairman Sawyer called a five minute recess. At 9:15 p.m. the meeting reconvened.

There being no further discussion, Chairman Sawyer closed the public hearing for this item.

Deliberations:

Member Cournoyer commented that he does not feel that the exact time and date when the staple machine stopped stapling is relevant. What's important is the change of use. The concern is going from a 7:00 a.m. start time with a 3:30 p.m. closing time where there would be tractor trailer trucks but they would come and go via Prescott Rd. and due to their length they would stick out into the road. Think about a diesel truck starting up and idling at 5:00 a.m. for five or ten minutes; this would be a problem. This would be taking a relatively quiet neighborhood between 5:00 a.m. and 7:00 a.m. and making it into something it is not today.

Member Webber agreed and feels a variance is needed for a change of use. Warehousing is not the same as tack manufacturing. Chairman Sawyer agrees on both points. The primary use was manufacturing and not warehousing. Member Cournoyer pointed out that even when warehousing was taking place it was during normal awake hours.

The board reviewed the variance criteria for the change of use.

1. The variance will not be contrary to the public interest.

Following their discussion the majority of the board felt the proposal is contrary to the public interest because of the impact of hours of operation to the neighborhood. Member Belletete understands the issue with the hours but does not agree; he questions conditioning the hours of operation. By majority vote the board determined that the proposal is contrary to the public interest. (4-1)

2. The spirit of the ordinance is observed:

Member Webber commented that it is the Residence A district; it is supposed to be quiet - residence only. Member Tieger summarized that the ordinance attempts to define what happens in what district. In the ordinance it specifies what is allowed in each district. The question is does the proposal meet the spirit of the ordinance and in his opinion it does not. All members agreed it is not in the spirit of the ordinance. (5-0)

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3. Substantial justice is done:

Member Tieger pointed out that justice is for the people in Jaffrey who voted for the zoning ordinance. He does not feel that substantial justice would be done if granted. All members agreed that if granted substantial justice would not be done. (5-0)

4. The values of surrounding properties are not diminished:

Member Tieger stated Bill Stewart built the building, that's when it diminished which was pre-zoning. Chairman Sawyer feels there are no pre-existing privileges because of time or change of use. He feels they will diminish to some degree. Member Cournoyer commented that if you compare the time when King Mfg. was in full operation to the time when it was no longer manufacturing and all was quiet compared to the time that could be, if the hours of operation could be managed, there might be an increase in value because it's better than when King was in operation. However, compared to two weeks ago when all was quiet values could diminish. Member Webber feels there is the possibility of diminished values. Member Belletete does not feel property values will diminish. By majority vote values of surrounding properties could diminish. (4-1) Roll call: Ayes – Tieger, Webber, Sawyer and Cournoyer. Nays – Belletete.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

Chairman Sawyer noted that it hinges on any special conditions with the property. Member Cournoyer commented that you have a situation where in 1957 someone created an unnecessary building which became a hardship; "the property cannot be reasonably used in strict conformance with the ordinance:"

Following some discussion the board unanimously voted that enforcement of the provisions of the ordinance would result in an unnecessary hardship. (5-0)

Regarding the variance request to Section XI, 11.1.3:

11.1.3 reads "When any existing nonconforming use of land or buildings has been discontinued for one-year, the land and buildings shall thereafter be used only in conformity to this ordinance".

Member Cournoyer asked if they are going to try and determine the exact time that Bill Stewart turned the staple machine off. Member Webber replied no. Member Cournoyer replied that he agrees with Member Webber and the variance is not needed. Member Belletete agrees that the variance is not needed.

Member Webber made a motion to deny. Member Tieger seconded the motion. (5-0)

**DECISION**

1. ZBA 14-05 O'Brien, Joseph and Amy, 30 Oak St., Map 244 / Lot 38, Zone: Residence B (with town water)

Variance – The applicant proposes an above ground pool and privacy fence with less than the required setbacks of thirty feet. (Zoning Ordinance, Section V, 5.1)

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On a motion by Tieger, seconded by Belletete the application to construct an above ground pool approximately twelve feet from the side and rear property line was granted as presented and per testimony given. (5-0)

2. ZBA 14-03 Algav, LLC (property of 295 Squantum Rd., LLC) 295 Squantum Rd., Map 242 / Lot 45, Zone: Residence A

Variance – The applicant proposes a variance for a change of use to an existing commercial building for use as warehouse storage within the Residence A district. (Zoning Ordinance, Section III, 3.2, Section XI, 11.1.3)

On a motion by Cournoyer, seconded by Webber the application proposing a change of use (Section III, 3.2) to an existing commercial building for use as warehouse storage was denied. (4-1) Roll call: Ayes – Cournoyer, Webber, Sawyer and Tieger. Nays – Belletete

Reason: Change of hours from its previous history and the impact it would have on the neighborhood.

On a motion by Webber, seconded by Tieger the application proposing a commercial use within the Residence A district (Section XI, 11.1.3) was denied. (5-0)

Reason: It is the board's opinion that the variance is not needed.

*Decisions of the Zoning Board of Adjustment are subject to a 30-day appeal period for rehearing.*

**OTHER BUSINESS**

**ADJOURNMENT**

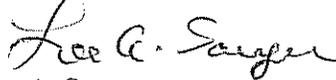
The meeting adjourned at 10:35 p.m.

Submitted:



Erlene R. Lemire  
Recording Secretary

Attest:



Lee A. Sawyer  
Chairman  
Jaffrey Zoning Board of Adjustment