

TOWN OF LYNDEBOROUGH
Zoning Board of Adjustment
Minutes

October 4, 2018

Approved 11/13/18

7:02 p.m. Roll Call: Chairman Karen Grybko; Vice Chair Rick Roy; Lisa Post, Linda Anderson and alternate Pam Alter.

Member Tom Chrisenton recused himself because he is also the Planning Board Chairperson and there is the possibility this case may be before the Planning Board. Alternate Pam Altner took Mr. Chrisenton's seat at the Board.

Public Present include Larry Boisvert, Attorney James Lombardi, Sharon Boisvert, Selectman Mark Chamberlain and abutter Steve Brooks

Media Present: Jessie Salisbury

NEW BUSINESS:

Case 2018-3:– Lots 237-13 & 237-14 – Variance 1200

Laurent (Larry) Boisvert and Sharon Boisvert; owners of Portable Privies, Inc.

Also D/B/A Feel Good Farm, 52-54 Johnson Corner Road, Map 237, Lot 13 & Map 237 Lot 14.

The application dated April 24, 2018 is the application submitted by Mr. Boisvert and Mr. Lombardi which requests a Variance from Section 1200 of the Lyndeborough Zoning Ordinance to permit the operation of a Portable Privies business involving the rental of portable toilets to off-site customers.

Secretary Humphreys handed out a package of information to each Board member that was delivered to Citizens' Hall after 3:30 p.m. on October 4, 2018. The members have not had time to review the new documents from Attorney Lombardi as they were delivered just hours before the meeting.

Chair Grybko opened the meeting at 7:00 p.m. with a roll call then reviewed the Rules of Procedures. The Board will be going off the answers to the five Variance Criteria questions as listed in the April 24, 2018 letter submitted by the applicant.

Attorney James Lombardi, who is the attorney for Larry and Sharon Boisvert, asked if he could briefly review what is in the package.

Mr. Lombardi asked for "clarification on the variance request from particular provisions of the ordinance that the town feels are not met by the current business. As I understand, based on the Zoning Board's decision to uphold the decision of Ed Hunter (former Code Enforcement Officer), the three reasons he gave are the three provisions of the ordinance we are looking for a variance from. Is that the Board's understanding?

I'm asking for clarification, to request a variance from the ordinance that the town feels are not met by the current business, based on ZBA decision of Ed Hunter."

Chair Grybko's understanding is, the application does not fit into the box of the zoning regulations therefore the applicant is requesting a variance.

Attorney Lombardi agreed, but said, "In my experience in all other variance applications you indicate to the Board what the specific provisions of the ordinance are that you are requesting a variance from. So because we did not have the luxury of knowing what those provisions were, specifically, before we submitted the application because we didn't have the Board's decision on the appeal, and we didn't know specifically what those provisions were. We assumed they were the incidental and secondary provision, as well as the reason he (Ed Hunter) gave which was in regarding to the home business not being conducted entirely in a residential or accessory structure. I'm looking for clarification and if the Board understands the same thing I do in connection with this request.

Chair Grybko's opinion is the Variance process starts with the five Variance Criteria questions as outlined on the variance application.

Mr. Lombardi said, "Yes. Those will be, those have been addressed. Specific provisions from which the variance is requested are those which were referenced by Mr. Ed Hunter in his letter of March 22, 2018 and not any others."

The Board and Mr. Lombardi discussed this topic for a while.

Lisa Post suggested the Board ask the advice of an attorney in regards to Mr. Lombardi's question. "I spoke with an attorney at New Hampshire Municipal Association (NHMA) and he indicated we have to begin with a clean slate. We cannot refer back to the appeal. We must use the 2018 Ordinance and must address both the Ordinance 1200 A General Requirements Items 1-10 Home Business and 1200 B Home Business Items 1-5.

Resident Steve Brooks, who was a former ZBA member, said it was his understating that no one appears before the ZBA before they are given an Administrative Decision or by request from the Planning Board. "The previous meeting, there was a decision not to overturn the building inspector's decision, now they wish to pursue other venues. I know that they have to see the Planning Board and they say they don't want to appeal."

Member Rick Roy expressed that he would like to see this matter go before the Planning Board before the ZBA reviews it. Chair Grybko and Member Lisa Post both concurred with this.

VOTE: Lisa Post made a motion to reschedule this hearing for another time so that the Board can have a discussion and come together after consulting an attorney and decide the course of action.

Discussion continued.

VOTE: Lisa Post made a motion to table this hearing until the Board has a discussion on how to handle this.

Discussion continued.

Linda Anderson seconded that motion.

Linda Anderson mentioned it was not right to receive a big package of additional documentation during the meeting. She would also prefer more time to read the new documents that Mr. Lombardi submitted on Oct 4, 2018.

Lisa Post suggested that all members review the 2018 *Powers of Duty of the ZBA*.

Rick Roy commented, in his experience as a ZBA Member, the applicant answers the five Variance Criteria questions. He feels like the applicant does not want to answer the questions.

Discussion continued.

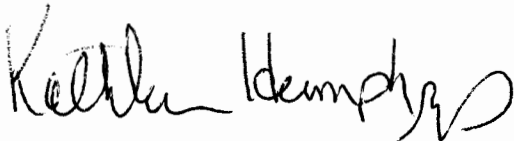
The Board felt there were questions they could not answer at this time.

Vote: The Board voted 5-0 to continue to date/time specified on Wednesday, October 17, 2018 at 7:00 p.m. at Citizens' Hall. Motion passed unanimously.

The secretary will ask Town Administrator Boland to schedule a work session with Attorney Drescher.

VOTE: Pam Altner made a motion, Lisa Post seconded to adjourn at 8:50 p.m. Motion passed 5-0.

Respectfully submitted,



Kathleen Humphreys
ZBA Secretary