

Zoning Board Meeting
March 21, 2001

The meeting was called to order at 7:30 p.m. Those attending were: Mike Iafolla, Chairman, Mark Johnson, Vice Chair, Russell McCann, Craig Kelleher and Chuck Gordon.

The first order of business was the approval of minutes. Craig Kelleher made the motion to accept the minutes of February 21, 2001, seconded by Russ McCann, vote unanimous.

Case 2001:07 – Dress Barn, 33-49 Lafayette Road, North Hampton Factory Outlet, for a variance to Article V, Section 506.3(e) for a sign that exceeds the square foot requirements.

Attorney Bernie Pelech gave the presentation for the applicant. He stated that under the present zoning ordinance, the square feet allowed for a sign size would be 24 sf, and that he believed that the size of the sign should be determined in proportion to the size of the building frontage. In this case, the store front would be composed of three stores. He then proceeded to present the “five findings of fact” and that the hardship would be the size of the store front and the distance from Route 1; the size of the sign should be allowed, which would be a total of 79 square feet, including the Woman & Misses signs. Russ McCann made the motion to approve the variance, seconded by Mark Johnson, vote unanimous.

Case 2001:08 – John Ennis, 18 Woodridge Lane, for a variance to Article IV, Section 406 to the 25’ setback requirements from the side and rear property line, for the expansion of existing mudroom footprint by 4 feet.

John Ennis, homeowner, made the presentation and explained that the changes to the home were to allow better accessibility for his handicapped 8-year old son. The existing mudroom will be demolished and the new mudroom will be built 4 feet closer to the property line. The rest of the project incorporates the widening of existing hallways, doorways and the construction of a handicapped bathroom. He stated that he had spoken to the abutters to explain the process, and to his knowledge, had no problems with it. Craig Kelleher made the motion to approve the variance, seconded by Russ McCann, vote was unanimous.

Continued:

Case 2001:01, NHAAGS, 67 Winnicut Road as requested by the Zoning Board of Adjustment on January 17, 2001 Review of Compliance with Conditions of Approval; & **Building Inspector’s report on 67 Winnicut Road**

The Board received a request from Attorney Ahlgren, representing Mr. Datilio, requesting a continuance because three of the regular members were absent. Attorney McEachern opposed the request stating that there was no jurisdiction for what was going on there. The Chairman asked the Board members to deal with the facts and determine if the Board could make a ruling, which he put to a vote of the Board. Russ McCann made the motion to hear the case, seconded by Mark Johnson, vote was unanimous.

The Chairman, Mike Iafolla, stated that the first order of business was to hear and go over the report of Paul Charron, Building Inspector dated February 27, 2001, in which he listed seven (7) items which was a list of violations. Paul stated that NHAAGS had come into compliance according to the reply to his letter from Danielle Balser. Attorney McEachern stated that the applicant is entitled to the special exception (terms of conditions) of original granting in 1973. He also stated that the Town was not enforcing its ordinances; Mike reminded him that they were only talking about compliance.

McEachern stated that the Board did have jurisdiction; Mike stated that the issue was going to court. McEachern stated that in 1973, Mrs. Diane Datilio was granted a special exception for 8-10 students and that in 1990 was granted conditional approval but with no increase in activity.

The Chairman asked for a time out so that the Board could confer. Questions raised were: does it matter what the Board says if the matter is going to court in two days, the Board has to act before the issue goes to court, and should the discussion dig deeper than the Building Inspector's report? Also, the issued that the Board was being bombarded with, was whether the special exception should have been granted at all. Mike again stressed to the Board that the only issue the Board could deal with, was compliance, and the special exception would be dealt with by the courts.

Mike stated that they would go through the Building Inspector's letter of December 5, 2000 which was the date of the original Cease & Desist Order. Attorney McEachern started by listing 26 outside activities that he stated were not allowed under the granting of the original special exception. Attorney Ahlgren stated that he rejects the position of no outside activities; that incidental outside activities were allowed in 1990 by the Planning Board and the Building Inspector gave a copy of this plan to the Board. Attorney McEachern stated that the applicant was prohibited by the ordinance from performing outside activities, and that the application for a variance was withdrawn because there was no basis for these activities.

Attorney McEachern continued by saying that there needs to be a change in the zoning, the approval in 1991 was denied; and that the law applies to the Town, there should not be any outside activities outside of the structures. The letter of December 5 shows how this varies from the residential character, specifically, the list of complaints. Mr. Datilio gave Paul a letter stating that he would be purchasing arborvitae trees, is this compliance? McEachern says no. The main problem is expansion for expanding for increased number of students. This site is not suited for a residential neighborhood, and he could see no changes after the Building Inspector's letter.

One of the main complaints from neighbors, was noise; cars and buses late at night which is a violation of curfews. Friday Night Fun, specifically, goes from 6:39 to 8:30, curfew is 7:30. The North Hampton Recreation sent out notices for this family fun night. Also, the issue of cars and buses and increased traffic; McEachern proposed access through the side of the property which would prevent interference with the neighborhood. Other violations were articles being produced on the premises; operations on Sundays; and traffic in March. He also charged the Board to enforce the ordinance and the special exception. Each item shows a major violation and the Building Inspector's attitudes shouldn't change; Mr. Datilio still has three signs. He stated that he felt that of the seven factors stated in the Cease & Desist, that nothing had changed and there was no enforcement; therefore, they had to add the Board of Selectmen in the suit.

Mike Iafolla stated that according to Town Counsel, John Ryan, that the property owner that has a special exception, is not prohibited from full use of his property.

Attorney Ahlgren then spoke in rebuttal. He stated that the foundation for the enforcement dispute was the basis of the litigation; an effort to shut down the business. Tutinas has felt that the actions of the applicant have always been improper in scope. Concerning the plan of 1990, for the approval of outside activities, this decision should have been appealed immediately; this issue is now closed.

Chuck Gordon then made several statements: 1. There is no question of the desirability of this activity; 2. Whether the scope of the activities is in the spirit and intent of the ordinance (home occupation); 3. Previous action of the Zoning Board in 1973 or inactions have created some

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degree of stopple. Attorney Ahlgren agrees with Chuck. He feels that the applicant is not in violation; and to refer to the letter of February 27, 2001. He then submitted a letter from Mr. Datilio stating how many employees he has outside the family, and how many were volunteers. Regarding the cars and buses, they are not there at all hours, there is no basis for this. The Sunday issue, was a special cheerleading competition in Boston, which is an incidental happening. The Coke machine is gone and the sale of leotards has been stopped. The residential character of the property looks the same today as in 1990. The painting and landscaping will shield the outside activities. Within the mix of the community there are isolated activities within the spirit and intent of the ordinance. Regarding the Building Inspector's concerns, Mr. Datilio met with Deputy Fire Chief and Paul and this is ongoing. The type of foam being used, no more than 24 students are all within this restriction. The applicant has given Paul signed contracts of when work will be done: landscaping and painting.

Attorney McEachern stated that promises are easy and the Tutinas' have complained to all Building Inspectors from 1973 on, and the Town is not enforcing the ordinances, they should comply with the conditions of the special exception of 1990.

Attorney Ahlgren stated that compliance has been attained.

Mike reminded the Board that the Building Inspector is the sole enforcer for the Zoning Board and that Mr. Datilio has to meet the conditions for compliance.

A motion was made by to accept the Building Inspector's testimony and report that the violations have been corrected, seconded by Mark Johnson, vote was 3 in favor, 1 opposed, Craig Kelleher.

Meeting adjourned at 9:15 p.m.

Respectfully submitted,

Tina Kinsman
Zoning Board Secretary