

Case # 534

Applicant: David Linnane  
88 Bunker Hill Avenue

Members Present: John Dold, Neil Rowe, Arol Charbonneau and Bruce Barker

The Board of Adjustment held a Public Hearing on Tuesday, March 3, 2009, at 7:30PM in the Municipal Center to consider to request of an Appeal From An Administrative Decision to the terms of Section 17.8.1. Applicant asks the ZBA to review the Building Inspector's decision based upon conditions set by the ZBA in Case # 427 for a garage.

Acting Secretary Arol Charbonneau read the notice, the application received on January 27, 2009, the February 10, 2009 letter of denial from Chuck Grassie, Town Planner, the February 2, 2009 letter from Chairman John Dold, and the January 12, 2009 letter of denial with attachment from Terry Barnes, Building Inspector.

Chairman Dold stated there is not a full Board tonight and RSA 674.33 states "The concurring vote of three members of the Board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass". Chairman Dold stated we normally have a five member Board with three alternates. Chairman Dold added tonight there are only four members present and the applicant will need three concurring votes for his appeal to be accepted.

Chairman Dold stated the applicant's first application was received January 27, 2009. Chairman Dold's letter dated February 2, 2009 informed the applicant that he had seven days from receipt of Mr. Barnes's denial letter to apply to the Board. The letter informed him that he did not meet the time limit requirements and the application is not accepted. Chairman Dold asked if there was another application in the file. Bruce Barker responded there was not. Chairman Dold then asked the applicant if he filed another application. Mr. Linnane responded he did file one within two days after receiving the second denial letter. Chairman Dold stated the Board did not have it. (Note: The ZBA Clerk was informed by the Town Administrator that the original application and case number could be used instead of a second application since the first application was never heard.) Bruce Barker questioned the seven-day time frame. Mr. Linnane stated he was never advised about the seven-day time frame or about Article 17.8.1. Chairman Dold responded that Mr. Linnane quoted it in his application. Bruce Barker said in the Rules for Procedure for Stratham Board of Adjustment it states, "Appeals from Administrative Decision taken under RSA 676:5 shall be filed within thirty days of a decision". He added that seems to be in conflict with the ordinance which states seven days. If there is a conflict within the ordinance usually the most restrictive takes precedence. Bruce Barker stated he would think the ordinance would take precedence over the rules they adopt.

Neil Rowe asked Mr. Linnane what the difference was between the first application and the second application. Mr. Linnane responded very little, except that he noted Section 17.8.1 on the new application. Neil Rowe asked if the only other difference is the date that he actually submitted it to be within the seven-day time frame. Mr. Linnane responded that is correct. Chairman Dold asked if Mr. Linnane could give an approximate date of when he submitted the second application. Mr. Linnane responded he would have submitted it within a day or two of the denial letter dated February 10, 2009. Chairman Dold then asked the applicant what he changed in the second application. Mr. Linnane responded he noted Section 17.8.1. Chairman Dold stated essentially the application is the same. Neil Rowe added it is within the time limits set by the second set of notices. If Mr. Linnane did indeed file a second application, Chairman Dold questioned whether the Board can accept the fact that there is another application somewhere and just proceed tonight. Neil Rowe responded the sequence of events that took place to get the Board here, although technicalities, are not the underlying issues. He questioned whether the Building Inspector and the Town Planner were correct in denying the permit. Neil Rowe wondered if Mr. Linnane is not granted the appeal and takes it to a higher level, would the Town lose their decision based on the fact that the application the Board has in the file did not fit within the seven-day requirement which is in the ordinance.

Mr. Linnane stated he would like to discuss why the permit was denied in the first place. He was unaware of the seven-day requirement in which to file his case because he was misinformed by a few people. He was told he had until January 27, 2009 to file his application for the February meeting. Mr. Linnane stated the garage will improve his property, adding that it is for personal use. What's in the tent will go in the garage but that is cold storage. He added there are no deliveries on his property, he has no employees and his bookkeeper is in York, ME. He added his home occupation is a fax machine and a 10' x 20' tent that he uses for storage. Mr. Linnane stated his house is 3300 square feet and he is allowed a quarter of that for a home occupation. He can fit the contents of the tent and what's in the yard into about 360 square feet which is less than half of the basement portion of the garage. All that's in the tent is a 4' x 30' set of steel shelving with stored equipment parts. The other side of the basement will fit one vehicle and lawn equipment. Mr. Linnane stated he is within the parameters for a home occupation even if everything from the tent is in the garage. Neil Rowe asked Mr. Linnane how many employees he has to which Mr. Linnane responded none. Neil Rowe asked if the vehicles on the upper portion would be his private vehicles. Mr. Linnane responded yes and the vehicle in the garage basement would be a company truck which would probably be there only for cleaning it out and loading it up. Neil Rowe asked Mr. Linnane what he has for office space. Mr. Linnane responded he has a fax machine on a desk that is used more for personal than business. The allowed square feet for a home occupation within a house of 3300 square feet is 825.

Neil Rowe asked Mr. Linnane if he has 400 square feet of storage in his basement presently. Mr. Linnane responded he has less than that adding that it is all household items. Mr. Linnane added they do not have an attic. Neil Rowe said in the minutes from the 2001 meeting it states that the office space is about 700 square feet. Mr. Linnane stated that was a portion of the basement that they finished off that his children and grandchild live in now. Mr. Linnane added back then he had a secretary. Neil Rowe asked how much of the basement in his home is finished. Mr. Linnane responded about 800 square feet. The total finished square feet of the home was determined to be approximately 3116. Neil Rowe stated 25% of 3116 is 779. Chairman Dold confirmed with Mr. Linnane that there will be nothing in the basement and he will have up to 700 square feet of space in the garage basement for his business. Bruce Barker stated in the previous case with the first criteria, four Board members agreed it was met as long as the office area was 700 square feet and the storage area was 50 square feet with only Mr. Linnane and his secretary at the office. Chairman Dold stated now it will be mostly storage and minimal office space. He added it is not adding space but it is a change in the definition of the allocation of space.

Chairman Dold asked if anyone would like to speak in favor of or in opposition to the applicant. Barbara Broderick, 84 Bunker Hill Avenue, stated she abuts the Linnane property. Ms. Broderick said in this climate we probably need garages. She added she is not clear, now that the business has shrunk, why there is an objection to the garage. Ms. Broderick said as long as it is twenty feet from her property, she feels he should be able to have a garage.

Mr. Linnane stated he has to question whether this is a home occupation, since all it really is is cold storage. He added it is not mercantile, he does not have customers and he does not have deliveries. It is just storage. Neil Rowe responded when the Board granted Mr. Linnane the ability to run his plumbing business out of his home, they took into consideration back in 2001 all the criteria necessary for a home occupation. Mr. Linnane stated it is pretty limited for a home occupation. Neil Rowe stated over the eight years it has been in existence, it has changed. He added the number of employees has changed as he has subcontractors now. The storage was small and the office was large. Neil Rowe added keeping vehicles off the street and additional traffic flow was all part of the Board granting the home occupation in the first place.

Chairman Dold stated there is no increase in space so Mr. Linnane has not violated the Special Exception that was granted in 2001. Chairman Dold stated Mr. Linnane has changed the location of his business operation from 2001 to tonight. It will be in a different building. Chairman Dold said because of the change of the location, the Board feels there has to be another request for a Special Exception and the applicant has not come here tonight with a request for a Special Exception. Neil Rowe stated Terry Barnes' letter was written but the application was not received within that seven-day timeframe. He added in lieu of that the letter was allowed to be re-issued and within the

seven-day period of the second letter an application was presented that isn't in the record but will be shortly. He added if the Board goes further, they must proceed not upon Terry Barnes's decision, but upon Chuck Grassie's decision. Neil Rowe added if Mr. Grassie was correct in denying it, then the condition put on the 2001 meeting states that it shall be null and void and Mr. Linnane will no longer have a home occupation. If he comes before the Board with a new application for a home occupation to have 700 or so square feet in that proposed lower part of the 30' x 30' new building and it is granted then Mr. Linnane is back in business again. Neil Rowe stated if it is not granted, then Mr. Linnane has nothing. Arol Charbonneau stated the denial is of the building permit application to move the space. He added the building permit can be denied but Mr. Linnane still retains his home occupation in the existing space. Arol Charbonneau suggested that Mr. Grassie erred in that even though there are some changes, the space is moving and the utilization of the space is different, theoretically, it doesn't change the purpose of the condition. Chairman Dold stated one of the conditions in the granting of the Special Exception in 2001 was that if the situation changed the Special Exception would be null and void. If Mr. Linnane's situation has changed then the Board agrees with the Town Planner. If his situation hasn't changed then the Board agrees with the applicant. Arol Charbonneau felt that the purpose of the conditions was to prevent additional employees, traffic or additional space. He didn't feel that moving the space or changing the utilization of the space compromised the purpose of the conditions. Bruce Barker asked if a tent that wasn't envisioned in the granting is put up and used for storage is a change in condition. Mr. Linnane stated the 16' x 24' shed was in the original which was moved and replaced with a smaller tent. Neil Rowe read from the 2001 minutes, "As long as the office area is 700 square feet, the storage area is 50 square feet, and there is only him and his secretary at the office, it meets the standards."

Chairman Dold motioned that the letter of denial by the Town Planner in his letter to David Linnane dated February 10, 2009: The situation as defined in the Special Exception granted in December 2001 by the ZBA has not substantially changed; however, the 750 square feet of home occupation space in the basement will now be relocated to the basement of the new two-story garage. Therefore, the decision of denial by the Town Planner is overturned and the building permit should be issued. The motion was seconded by Arol Charbonneau. Bruce Barker and Neil Rowe were not in favor of the motion. John Dold and Arol Charbonneau were in favor of the motion. Chairman Dold stated the vote is two against two; therefore, the motion does not pass and the letter of denial by the Town Planner is upheld. Chairman Dold advised the applicant of the thirty-day appeal period and called Case # 534 closed.

Respectfully,

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Norma Corrow, ZBA Clerk

The tape of the meeting is available at the Town Office Building for review during regular business hours.