

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **JULY 26, 2012**

4 **PRESENT:** Edward Frothingham, Chair, Dick Katz, Clayton Platt, Daniel Schneider, Aaron Simpson, Judith
5 Whitelaw, Town Counsel

6 **ALSO PRESENT:** See Attached Sign-In Sheet

7 Chairman Frothingham called the meeting to order at 7:00PM

8 **CASE 12-05: PARCEL ID: 0104-0020-0000; MOTION FOR REHEARING ZONING BOARD OF ADJUSTMENT**
9 **DECISION – DONNA DAVIS; 15 PROSPECT HILL RD.**

10 Chairman Frothingham asked the Board if they had a chance to go through the letters and materials.

11 Chairman Frothingham decided to first discuss Attorney Moeckel's Motion for a Rehearing.

12 Mr. Schneider said that he did not see any new statements of facts in the Motion and a lot of the things
13 alleged in the letter were contradicted by Michael Marquise's testimony. Mr. Schneider read a portion
14 into the minutes from April 12, 2012 beginning on Line 581 "In regard to someone bringing a vehicle and
15 having it repaired, if Mr. Marquise had knowledge about that, it would have triggered a requirement to
16 go before the Planning Board for a Site Plan Review under Article 1 Section 2. Atty. Whitelaw asked if
17 there was a difference in the Zoning Ordinance at the time between a home occupation and a home
18 business. Mr. Marquise said there was no difference. The only definition for home occupation was in
19 Article 1 of the Site Plan Review regulations. Mr. Schneider asked at that time, why would the repair
20 business trigger Site Plan Review as the dealer business did not. Mr. Marquise said that the difference
21 that he saw at that time was that the dealer business was strictly a home occupation as he didn't deal
22 with public at the property. Mr. Marquise stated that it is an important distinction as that is what Site
23 Plan Review is meant to do is to protect the public such as in terms of parking, in terms of septic
24 facilities, etc. Daniel Schneider asked if this was prior to 2000 and Mr. Marquise said from 1987 to 2000,
25 Site Plan Review was the only way of regulating merchant businesses. Mr. Marquise said that under
26 Article 1, he believes the business is an onsite service business and would require a Site Plan Review."
27 Mr. Schneider continued that he does not see any statements of facts in the motion and the only thing
28 that he sees that is new is an allegation that the Chairman is prejudiced which he finds an insult to the
29 integrity of the Board and is out of line.

30 Chairman Frothingham asked Mr. Katz for comments. Mr. Katz said that he thinks that Mr. Schneider
31 has covered everything that he thinks is appropriate for the hearing so far.

32 Chairman Frothingham asked Mr. Simpson for comments. Mr. Simpson asked Town Counsel for advice
33 as the motion for rehearing takes a taking into account and he would like to know if the Board should
34 address that. Atty. Whitelaw said that the Board should not because that determination is made after a

35 regulation is applied, a taking is something that is actually a legal question; it isn't something that is
36 within the determination of the ZBA.

37 Mr. Simpson said that there is an issue in the Motion that the Code Enforcement Officer's decision is
38 beyond his scope of code enforcement authority which he does not know if is legitimate. Mr. Simpson
39 continued that he believes Mr. Landry is not just the Zoning enforcement officer but is the Code
40 Enforcement Officer for the Town of Sunapee. Atty. Whitelaw asked and Mr. Simpson answered that he
41 is referring to paragraph 14 of the Motion. Atty. Whitelaw said that her understanding that the way
42 enforcement works in Sunapee is that the Code Enforcement Officer is charged by both the Planning
43 Board and ZBA for enforcement. Mr. Simpson said that the motion in paragraph 15 then raises the issue
44 that the ZBA should not be looking at the Site Plan Regulations. Atty. Whitelaw said that the claim is
45 that the ZBA does not have the authority to interpret the Site Plan Review Regulations. The Zoning
46 Board's job is to interpret the Zoning Ordinance, however, the claim was made in this case that it was a
47 lawfully existing use as of 2000 and that determination needed to be made in order to review the Code
48 Enforcement Officer's decision. In order to make that determination, the ZBA had to make a
49 determination as to whether or not the use was lawful, not just lawful under the Zoning Ordinance but
50 lawful under anything else that was applicable because if it wasn't lawfully existing as a whole then it
51 wasn't protected.

52 Mr. Simpson stated that the alleged fraud in paragraph 20 does not seem to have any facts supporting
53 fraud.

54 Mr. Simpson said that he believes that the Board should find that the appeal of the party and Attorney's
55 submission does not have any new facts that would justify a rehearing.

56 Chairman Frothingham asked Mr. Platt for comments. Mr. Platt said that he wanted to discuss
57 paragraph 8 of the motion. Mr. Platt said that he was not sure if this is a new fact or emphasis on what
58 was said before but it more clearly states the fact that the transactions on the property were fairly
59 minimal. Mr. Platt continued that it was a question he had during the original case as to how many
60 customers went to the site and how much business was actually done there. Chairman Frothingham
61 said that he does not believe it is new information and has already been addressed in prior meetings.

62 Chairman Frothingham asked if there were any further comments from the Board before entertaining a
63 motion to accept or deny the Motion for a Rehearing. The Board discussed whether the motion raised
64 a standing issue. Atty. Whitelaw advised the Board that when it is the applicant they do not need to
65 make this determination.

66 Aaron Simpson made a motion to deny the Motion for Rehearing as presented by the applicant. Dick
67 Katz seconded the motion. The motion passed unanimously.

68 Chairman Frothingham stated that the second Motion for a Rehearing is from Bruno Bernard of 82
69 Dowd Lane in Sunapee.

70 Chairman Frothingham asked for comments from the Board regarding his letter.

71 Mr. Simpson asked if the Board has to establish if the people who wrote the letters were at the
72 hearings. Atty. Whitelaw said that the Board just has to look at standing and then substance.

73 Mr. Platt asked where Dowd Lane is located and it was confirmed that the road is in Orchard Park and
74 was shown on a map where it is located. Atty. Whitelaw explained that the Board is looking at a map of
75 the Town and identified on it is where each of the people who wrote a letter appealing the decision is
76 located. It was determined that Mr. Bernard is not an abutter of the applicant.

77 Chairman Frothingham asked if any of the Board members believe that Mr. Bernard has any standing in
78 this issue.

79 Mr. Platt had a question regarding case law cited and the letters as he feels that most of the case law
80 was from something that was granted. Atty. Whitelaw said that the applicant and abutters have
81 standing but the letters are people who wanted to appeal. Other people can have standing as well but it
82 isn't automatic.

83 Mr. Schneider said that he does not feel as though Mr. Bernard indicates any relationship to the
84 claimants and certainly is not an abutter so he does not see what his standing would be. Chairman
85 Frothingham agreed. Mr. Simpson said that he does not see anything other than he is a tax payer, not
86 that he has suffered because of the decision. Mr. Platt said that he agreed.

87 Aaron Simpson made a motion to find that Mr. Bernard in this situation does not have standing to
88 appeal the Board's decision. Dick Katz seconded the motion. The motion passed unanimously.

89 Chairman Frothingham said that the third letter is from Edward Andersen and asked if any of the Board
90 would like to comment on his standing.

91 Mr. Schneider said that Mr. Andersen did testify before the Board and does have a close relationship
92 with the Larrow's and has been involved as a contract employee and in some respects because of the
93 towing business brought some publicity to the case. Mr. Schneider said that it seems to him that
94 although he is not an abutter, it would behoove the Board to grant standing to Mr. Andersen. Mr. Platt
95 agreed. Mr. Simpson said that he agrees with Mr. Schneider about the testimony and is maybe more
96 directly affected by Mr. Bernard but that he does not see how that is written in the letter as it just says
97 that the Board was wrong. Mr. Schneider said that he is not commenting about the contents of the
98 letter, he is commenting on whether or not the Board believes that he is truly involved in this matter.
99 Mr. Simpson said that Mr. Andersen is not the applicant so he is not presumed to have standing nor is
100 he an abutter and it is his burden to prove he has standing to file the appeal and he does not see that in
101 the letter. Mr. Katz said that he agrees with Mr. Simpson but also does not believe that Mr. Andersen
102 has standing as he reads the law. Mr. Platt said that he thinks that it is difficult for a layperson to craft a
103 letter that meets the criteria and feels that the Board should give the letter a hearing. Mr. Simpson said
104 that he does think that it might be good to find the letter has standing given the testimony.

105 Chairman Frothingham asked for a motion to give Mr. Andersen standing.

106 Clayton Platt made a motion to give Mr. Andersen standing regarding his letter for an appeal. Daniel
107 Schneider seconded the motion. The motion passed four to one.

108 Chairman Frothingham asked the Board to address the letter.

109 Mr. Schneider said that he does not see any facts in the letter that were not addressed at the previous
110 hearing. Mr. Platt agreed with Mr. Schneider. Mr. Katz said that he agrees that there is nothing new in
111 the letter.

112 Mr. Platt said that his only comment is that he believes he brought up the issue of business hours and
113 that was in support of the applicant. It was agreed that it is not new information.

114 Mr. Simpson said that the only issue he sees that could possibly be new is the allegation that Mr. Landry
115 revoked that license though he believes that testimony they heard was that he did not have anything to
116 do with it. Mr. Simpson determined that the allegation is not new and is just restating.

117 Daniel Schneider made a motion to deny the request for rehearing made by Mr. Andersen. Dick Katz
118 seconded the motion. The motion passed unanimously.

119 Chairman Frothingham asked the Board to discuss the letter from Bradford Osgood of 100 Lower Main
120 St., Sunapee, asking for a rehearing.

121 Chairman Frothingham said that he does not see how Mr. Osgood has any standing. Mr. Platt agreed.

122 Daniel Schneider made a motion to deny standing to request a rehearing from Mr. Osgood. Dick Katz
123 seconded the motion. The motion passed unanimously.

124 Chairman Frothingham asked the Board to discuss the letter asking for a rehearing from Christopher and
125 Joan Pankhurst of 14 Prospect Hill Road.

126 Aaron Simpson made a motion that based upon the fact that they are abutters the Board find that they
127 have standing. Daniel Schneider seconded the motion. The motion passed unanimously.

128 Chairman Frothingham asked for comments on the letter. Mr. Platt said that he thinks the letter is very
129 similar to the one they wrote for the hearing. Chairman Frothingham said that he thinks it is very
130 supportive of their neighbor but that there is nothing new. Both Mr. Simpson and Mr. Katz agreed that
131 there is nothing new.

132 Aaron Simpson made a motion to deny the Motion for Rehearing filed by the Pankhurst's. Clayton Platt
133 seconded the motion. The motion passed unanimously.

134 Chairman Frothingham asked the Board to comment on the letter asking for a rehearing from Douglas
135 Richardson of 3 Brandywine Lane in Sunapee.

136 Chairman Frothingham said that he does not believe Mr. Richardson has standing. Mr. Simpson said
137 that Mr. Richardson in his statement and letter said that he used Mr. Larrow's business and he would
138 suggest that it is close to Mr. Andersen being a contract worker. Mr. Katz said that Mr. Richardson was a

139 customer. Mr. Schneider said that he does not see where that has standing as Mr. Andersen was an
140 employee and was also, as he testified, present at meetings with Mr. Larrow and Michael Marquise and
141 has been involved in the case but he does not see that Mr. Richardson has been involved other than
142 being a customer and he doesn't see that as grounds as standing. Mr. Platt said that he disagrees as Mr.
143 Richardson in paragraph one, has established that the loss of this business has been a hardship on his
144 marine business. Mr. Simpson pointed out that Mr. Richardson's business is not in Sunapee. Atty.
145 Whitelaw said that when you are looking at standing, the issue is how is the person who has filed a
146 motion for a rehearing affected by the decision of the ZBA in a way that is different than the rest of the
147 general public.

148 Chairman Frothingham asked for a motion to accept or deny standing for Mr. Richardson.

149 Clayton Platt made a motion to accept standing for Mr. Richardson to appeal the decision. Aaron
150 Simpson seconded the motion. The motion failed with two in favor and three opposed.

151 Aaron Simpson made a motion to adjourn the meeting at 7:26 PM. Daniel Schneider seconded the
152 motion. The motion passed unanimously.

153 Respectfully submitted,

154 Melissa Pollari

155

156 _____

157 Edward Frothingham

Aaron Simpson

158 _____

159 Dick Katz

Clayton Platt

160 _____

161 Daniel Schneider