



Office of
ZONING BOARD OF APPEALS
272 Main Street
Townsend, Massachusetts 01469
Phone: (978)597-1700 x1723 Fax (978)597-1722

William Cadogan, *Chair*
Darlene Sodano, *Vice-Chair*
Julie Johnson, *Clerk*

Anthony Genova, *Member*
Craig Stevens, *Member*

John Giunta, *Associate member*
Kelly Chambers, *Associate member*

MEETING MINUTES
May 29, 2013 at 7:00 p.m.
Room 2

1.0 Preliminaries

- 1.1 Call the meeting to order:** Chairman Bill Cadogan opened the meeting at 7:02pm.
- 1.2 Roll Call:** Present were members Bill Cadogan (BC), Darlene Sodano (DS), Julie Johnson (JJ), Tony Genova (TG) and Craig Stevens (CS) and Associate members Kelly Chambers (KC) and John Giunta (JG). Also present was Administrative Assistant Karen Chapman.
- 1.3 Topics not reasonably anticipated by the Chair 48 hours in advance of the meeting:**
 - 4.8 Letter from CHAPA re: 328 Main St. # 3 resale:** JJ motioned to add 4.8 to the agenda. TG seconded the motion with all in favor.
- 1.4 Review & approve minutes:** 11/15/12: TG motioned to approve the minutes as presented. DS seconded the motion with all in favor.

2.0 Hearings/Appointments/Work Sessions:

- 2.1 7:00pm: Public Hearing – Special Permit – Kevin Smith/Ken Tully – 56 Brookline Rd. Earth Removal Special Permit – Zoning Bylaw §145-46.**

BC opened the public hearing at 7:03pm. JJ read the legal notice. Present for the applicant were Kevin Smith and Ken Tully. The applicant would like to remove approximately 1,000 cubic yards of material from the lot in order to rebuild a house at 56 Brookline Road. BC read the mandatory referrals.

The applicant submitted the following information to the Board:

1. A completed Zoning Board of Appeals Application Form.
2. An 8½ x 11 copy of the proposed house and septic plan with the contours of the area to be removed hand drawn.
3. A plan entitled “Subsurface Sewage Disposal System” dated December 9, 2011 with revisions 1/17/2013 for Two Bedroom Dwelling and 6/3/2013 for Conceptual Grading Contours. This plan shows the proposed finished grades of the area where the material is to be removed.

The Board considered the petition in light of the statutory criteria and the Townsend Zoning Bylaw requirements, and found as follows:

Findings of fact:

- A. All Mandatory Referrals were received and read into the record.
- B. Two abutters were present from 54 Brookline Street concerned with the impact of soil removal next to their garage.
- C. In terms of Townsend Zoning Bylaw §145-46(D)(1-7) for earth excavation, the Board found as follows:

1. **Property lines, names and addresses of all abutters, including those across any way:** these requirements are present on the plans.
 2. **Existing contours at five-foot intervals in the area from which materials are to be excavated and in surrounding areas, or as determined appropriate:** contours present at two-foot intervals.
 3. **Natural features such as wetlands, the one-hundred-year floodplain, ground cover and surface and groundwater. Water table elevation shall be determined by test pits and soil borings. A log of soil borings shall be included, taken to the depth of the proposed excavation, congruent with the size and geological makeup of the site:** there are no wetlands on the site and there was no groundwater detected to a depth of 112 inches.
 4. **A topographical map showing drainage facilities, final grades, and proposed vegetation and trees:** a plan with proposed final contours was submitted.
 5. **Erosion and sediment control plan:** this requirement has been waived but applicant will install hay bales and silt fence at rear of property to prevent erosion and sedimentation.
 6. **A restoration plan including the amount and cost of proposed restoration materials:** the applicant will loam and seed the grassed areas and install bark mulch on the proposed slopes.
 7. **The location of monitoring wells which have been used to establish the high water table. The highest elevation of the water table shall be determined by observation wells monitored during the months of April and May. The observation wells' location shall be determined by the Board of Health or its designated agent. The information concerning height of water table shall be gathered before application for a special permit is made to the SPGA:** this requirement has been waived.
- D. In terms of Zoning Bylaw §145-65(F)(1)(a-g) Special Permit for earth removal, the board found as follows:
- a. **Adequacy of the site in terms of the size for the proposed uses;** the Board found the property is adequate.
 - b. **Suitability of the site for the proposed use;** the Board found the site is suitable for the proposed use.
 - c. **Impact on traffic flow and safety;** the Board is concerned by the location of the property in relation to the site line distance not being adequate and will address this in the conditions of the permit.
 - d. **Impact on neighborhood visual character, including views and vistas;** the board determined that the proposed project will be an upgrade to the neighborhood.
 - e. **Adequacy of method of sewage disposal, source of water and drainage;** the Board determined that the proposed methods are adequate as a new septic system approved by the Board of Health will be installed.
 - f. **Adequacy of utilities and other public services;** the Board determined that these are adequate.
 - g. **Impact on ground and surface water quality and other environmental and natural resource considerations;** the Board determined that the proposed project will have no impact regarding the environment and the applicant will be consulting with the Conservation Commission regarding the stormwater structures located to the back of the property.

DS made a motion that pursuant to §145-65(F) of the Townsend Zoning Bylaw, the proposed use will not have adverse effects, which overbalance its' beneficial effects on either the neighborhood or the Town, in view of the particular characteristics of the site. JJ seconded the motion. A roll call vote was taken as follows: DS=yes, JJ=yes, TG=yes, CS=yes, BC=yes. The motion carried.

DS made a motion to grant a Special Permit to Ken Tully and Kevin Smith based on the findings of fact under Zoning Bylaw §§145-46 and 145-65 for the proposed project to remove approximately 1,000 cubic yards of material from the property at 56 Brookline Road (Assessor's Map 52, Block 67, Lot 0). The

project shall be carried out according to the submitted plans and the following conditions pursuant to §145-46(I) and (J):

§145-46(I): The following standards of operation shall apply to every excavation, unless otherwise permitted herein:

- (1) No excavation, other than excavation necessarily incidental to a valid building permit or subdivision approval can be undertaken within 10 (ten) feet, measured horizontally, of an existing public way or an adjacent property line.
- (2) No earth or gravel shall be excavated closer to the maximum high water table than seven feet.
- (3) All topsoil and subsoil stripped from operation areas shall be stockpiled and used in restoring the area.
- (4) Any shelters or buildings erected on the premises for use by personnel or storage of equipment shall be screened from public view and shall be removed from the premises within 60 days after the special permit has expired or been revoked.
- (5) Hours of operation shall be between 8:00 a.m. and 2:30 p.m. on weekdays only. Trucks may enter and leave the premises only within such hours. All loaded vehicles shall be suitably covered to prevent dust and contents from spilling and blowing from the load. Applicant may extend the weekday hours until 4:30pm once school has ended for the year.
- (6) Trucking routes and methods shall be subject to approval of the Chief of Police insofar as he may regulate any industrial trucking. No trucks shall back onto Brookline Road. Applicant shall erect a sign in both directions alerting drivers to the presence of trucks entering and exiting the site. Applicant shall notify the Police Station when trucking operations will be occurring.
- (7) All access roads leading to public ways shall be treated or paved with suitable material to reduce dust and mud for a distance of 200 feet back from the way. **This requirement is waived as this distance is not available and there will be no access road.** The operator shall clean up any spillage on public ways.
- (8) Access roads shall intersect a public way at right angles for a distance of no less than 50 feet and shall be constructed at an angle to the public way or with a curve so as to help screen the operation from public view. All access roads shall have at least 250 feet visibility in each travel lane entering a state numbered or maintained highway and at least 150 feet visibility on all other streets. Access roads shall not drain directly onto public ways. **This requirement is waived as it is not possible to achieve 250 feet.** The applicant shall notify the Police Station on trucking days and install signage to alert drivers to activities.

§145-46(J): Restoration shall be carried out according to the plans submitted, conditions of the special permit, and the following minimum conditions:

- (1) Restoration shall be carried on simultaneously with excavation (where applicable), so that when any five acres have been cleared and stumped and five acres are in active mining operation. At least five acres shall be restored before work commences (including building haul roads) on the next contiguous five acres (where applicable). Final restoration work shall be completed within 120 days after expiration or withdrawal of a permit or upon cessation of operations.
- (2) No slope shall be steeper than 2:1 (two feet horizontal to one foot vertical) (50%); 4:1 (four feet horizontal to one foot vertical) is preferred for erosion control and shall be required in sensitive areas.
- (3) Retained subsoil and topsoil shall be spread over the disturbed area and treated with appropriate fertilizer or other suitable material and seeded with an appropriate mixture of grass or legume mixture as prescribed by the Conservation District, Soil Conservation Service, United States Department of Agriculture and as determined appropriate by the SPGA after consultation with the above-noted agencies. Trees or shrubs of prescribed species will be planted to provide screening and reduce erosion during the establishment period.

- (4) Unless the special permit conditions expressly require alteration of drainage patterns, the land shall be left so that natural storm drainage shall leave the property at the original natural drainage points, and so that the total discharge at peak flow and the area of drainage to any one point is not increased.
- (5) Natural vegetation shall be left and maintained on undisturbed land for screening, noise reduction and erosion control purposes.

The motion was seconded by JJ. A roll call vote was taken as follows: DS=yes, JJ=yes, TG=yes, CS=yes, BC=yes. The motion carried.

DS motioned to close the hearing. JJ seconded the motion, with all in favor.

2.2 7:30pm: Public Hearing – Variance – Kevin Smith/Ken Tully – 61 New Fitchburg Rd Variance from Land Space Requirements Table – Zoning Bylaw §145-32

BC opened the public hearing at 8:10pm. JJ read the legal notice. Present were applicants Kevin Smith and Ken Tully. The applicant is requesting a variance to the Land Space Requirements Table for lot area and frontage. The applicants purchased the property in 2005 and removed the house in 2006. The Zoning Enforcement Officer denied a building permit to the applicants because of Zoning Bylaw §145-19, which states “Any nonconforming use or structure which has been abandoned or discontinued for two years or more loses the protection of 145-17 and shall be required to conform to the current bylaw”. Section 145-17 grants grandfathering status to structures or uses begun before zoning bylaws were enacted. The applicants submitted information regarding the State taking some of the parcel in 1959 to move the road thereby reducing the size of the house lot.

DS states that it is a residential lot in a residential zoning district and therefore it is not a nonconforming use. At the time it was built it was conforming because it was before zoning. The preexisting nonconforming lot can comply with all of current zoning except lot area and frontage. The Board will ask Town Counsel for an opinion of the matter for the next meeting. DS motioned to continue the hearing to June 19, 2013 at 7:30pm. JJ seconded the motion with all in favor.

3.0 General Business:

3.1 Vote to recommend reappointment of Associate Members Kelly Chambers and John Giunta for a term effective July 1, 2013 to June 30, 2014.

JJ motioned to recommend for reappointment as Associate members KC and JG for a term effective 7/1/2013 to 6/30/2014. DS seconded the motion with all in favor.

3.2 Vote to recommend reappointment of Member Tony Genova for term effective July 1, 2013 to June 30, 2018.

DS motioned to recommend for reappointment as a Member TG for a term effective 7/1/2013 to 6/30/2018. CS seconded the motion with all in favor.

4.0 Correspondence:

4.1 Memo to Fire Chief from Land Use Coordinator re: Geothermal Heating-New Fire Station: noted.

4.2 Letter from CHAPA re: Benjamin’s Condos and Coppersmith Way 40Bs: noted.

4.3 Letter from Town Counsel re: Cerullo vs. Townsend ZBA – 1/23/2013: noted.

4.4 Letter from Town Counsel re: Cerullo vs. Townsend ZBA – 2/4/2013: noted.

4.5 Planning Board Site Plan Review Special Permit Decision – 1 School Street: noted.

- 4.6 Letter from ZEO to Energy North Group re: denial of application for sign change:** noted.
- 4.7 Letter from ZEO to Darwin & Susan Newton re: violation of Zoning Bylaw §145-26:** noted.
- 4.8 Memo from BOS re: Appointments to Boards/Commissions:** noted.

5.0 Schedule

Next meeting: June 19, 2013

6.0 Adjournment

DS motioned to adjourn at 8:56pm. CS seconded with all in favor.

Minutes taken and transcribed by:

Karen Chapman

ZBA Administrative Assistant

Materials used in the meeting can be found in the Town Clerks office and the Zoning Board office under 56 Brookline Road and 61 New Fitchburg Road.