

TOWN OF EAST KINGSTON, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT MEETING MINUTES
December 2, 1999

FILE

AGENDA

7:30 Motion for Rehearing – Laurie Carbone et al – 208 Haverhill Road (1999-09)

Members attending: Chairman John V. Daly, Vice Chairman David A. Ciardelli, Norman J. Freeman, David C. Boudreau, Alternate members Richard A. Cook, Nathaniel B. Rowell, J. Roby Day, Jr., and Selectman Donald C. Andolina.

Absent: Edward A. Cardone and Alternate Peter A. Riley.

Others attending: Andrew Berridge.

Motion for Rehearing – Laurie Carbone et al – 208 Haverhill Road: Chairman Daly opened the meeting at 7:35 p.m. for the consideration of a Petition for rehearing filed by Laurie Carbone et al in relation to the Board's October 19, 1999 decision to affirm the Planning Board's decision to approve a site plan review for Chuck Woodlands Realty Trust. Noting that all members present were quite familiar with the history of this matter, he waived presenting an historical review of the case.

He went on to say that the Board is faced with two options. If the Board elects to grant the request for rehearing, then they would have to hold another hearing to consider the entire matter all over again. If the Board elects to deny the request for rehearing, the appellant then has the right to go to Superior Court, if that is their desire.

He further stated that in his opinion, he did not see anything new in the motion for rehearing submitted by Mrs. Carbone. The statutes provide that if there is new evidence or any evidence of an error on the ZBA's part, then the Board should grant a rehearing. He stated that he did not see any of that. He doesn't believe the Board made an error in their October 19th decision, but that it is up to the Board to determine that.

Mr. Rowell stated that the progression of this case, if a rehearing were to be denied, would be to go to Superior Court. If a rehearing were granted, there is no reason to believe the end result would be any different.

Chairman Daly stated that there is no new evidence suggested in the motion for rehearing.

Mr. Day stated that if there were new evidence, that would have been the argument in the motion for rehearing.

Chairman Daly responded that the motion for rehearing must set forth all the reasons for the request.

Mr. Ciardelli agreed that there is no new evidence. He then asked if the Board did make a mistake in their decision.

Chairman Daly replied that in the as a matter of law, if a mistake was made the Board has an opportunity to correct it via a rehearing.

Mr. Ciardelli stated that the mistake may not be an error of law, but one of interpretation. The Board's decision could be interpreted to be incorrect, however, as far as the law is concerned, there was no mistake in the decision.

Mr. Andolina stated that if nothing has changed and no new material was submitted, there is no reason to believe the outcome of a new hearing would change.

Mr. Day said that the first issue raised was that the Board erred in their interpretation of the three articles cited. He stated that he looked for an error in the Planning Board's deliberation but found nothing.

He further noted item #20 of the Motion for Rehearing which states:

The are no constraints that have been imposed on the operation of this property and as a matter of law, the Zoning Board of Adjustment has erred in approving the Planning Board."

Mr. Day stated that this does not make sense because it was not the ZBA's job to consider the Planning Board's procedures, it could only consider their interpretation of the Zoning Ordinance.

Mr. Cook stated that he thinks the Board has been more than fair at looking at all the issues surrounding this case. When all the facts were presented, the Board has rendered an affirmative decision. The Planning Board and their decision was affirmed in their discussion and the ZBA didn't see a need to change it [decision].

Mr. Boudreau added that nothing is different now.

Mr. Rowell stated that he thinks the ZBA has proven this procedure is not going to solve anything. Rehearings could go on forever. By denying this request it moves the case into its proper arena, which could be helpful to both parties.

Mr. Cook agreed and stated that this is a moot issue and it need to be moved to a different arena.

For the record, those participating in voting are Mr. Freeman, Mr. Rowell, Mr. Andolina, Mr. Boudreau, and Mr. Ciardelli.

MOTION: Mr. Boudreau motioned to deny Laurie Carbone's Motion for Rehearing based on the appellant's failure to state any new evidence and because he (Boudreau) doesn't believe the ZBA erred in its October 19th decision. Mr. Freeman seconded.

DISCUSSION: None

The motion carried 5-0.

OTHER BUSINESS

Minutes: The Board reviewed the minutes dated October 19, 1999. On a motion from Mr. Day and a second from Mr. Cook, the Board voted to approve the minutes as presented.

Member status: It was noted that member Charles Marden has resigned from his position on the ZBA because he had moved out of town. Member Ed Cardone, though unable to attend meetings until off the night shift, expressed to the secretary his desire to stay on the board—his term expires in December 1999. Mr. Riley's appointment also expires December 1999, and he too, wishes to remain a board member.

Mr. Andolina and Mr. Rowell who both joined the board in an effort to fulfill the membership quota during the Carbone/Marden case stated that they would like to continue as members. Mr. Andolina stated that it was the Board of the Selectmen's intentions to appoint a Selectman to the ZBA and it was likely that he would be that selectman.

Mr. Day stated that when he attended a Municipal Association conference last year, he learned that there is no law that prohibits a selectman from sitting on the ZBA as long as it was not as an ex-officio.

Mr. Andolina added that the statute that outlines conflicts in multiple positions does not list a selectman sitting on the ZBA as a conflict. Members stated that should a conflict arise they would deal with it at that time.

Mr. Boudreau stated that a ZBA member should attend Planning Board meetings for informational purposes as well.

With no further business the meeting adjourned at 7:55 p.m.

Catherine Belcher,
Secretary

Minutes completed and on file December 3, 1999.